

ENTERED

April 08, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

FRED HOFFMAN, III,

Plaintiff,

VS.

JEFFERY RICHARDSON, *et al*,

Defendants.

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CIVIL NO. 2:18-CV-328

ORDER

The Court is in receipt of the Magistrate Judge's Memorandum and Recommendation ("M&R"), Dkt. No. 76. The Court is also in receipt of Defendant Jeffery Richardson's ("Richardson") Objections to the M&R, Dkt. No. 81; and Plaintiff Fred Hoffman III's ("Hoffman") Objections to the M&R, Dkt. Nos. 84, 87.

I. M&R

The Magistrate Judge recommends granting in part and denying in part Richardson's Motion for Summary Judgment, Dkt. No. 48. Dkt. No. 76. The Magistrate Judge recommends that summary judgment should be denied with regard to personal involvement in constitutional deprivations, qualified immunity, Eleventh Amendment immunity and § 1997e(e). Dkt. No. 76 at 31. The Magistrate Judge additionally recommends that summary judgment should be denied as to Hoffman's deliberate indifference claim against Richardson in his official capacity for injunctive relief in connection with his seizure disorder. *Id.* The Magistrate Judge recommends granting summary judgment regarding Hoffman's deliberate indifference claim regarding sleep deprivation. *Id.* Finally, the Magistrate Judge recommends denying Hoffman's motion for a TRO or preliminary injunctive relief. *Id.* at 32.

Richardson objects to the deliberate indifference and Eleventh Amendment recommendation. Dkt. No. 81 at 14. Richardson also objects that this case is not ripe for review. Dkt. No. 81 at 3. The ripeness argument was not included in the

summary judgment motion and is raised for the first time in his objections. Dkt. No. 48, 76.

Hoffman objects to the M&R's recommendations concerning sleep deprivation and the TRO. Dkt. Nos. 84, 87. The Court reviews objected-to portions of a Magistrate Judge's proposed findings and recommendations de novo. 28 U.S.C. § 636(b)(1). But if the objections are frivolous, conclusive or general in nature the court need not conduct a de novo review. *Battle v. United States Parole Comm'n*, 834 F.2d 419 (5th Cir. 1987).

a. Ripeness


Issues raised for the first time in objections to the report of a Magistrate Judge are not properly before the District Judge. *Finley v. Johnson*, 243 F.3d 215, 219 (5th Cir. 2001). Richardson's ripeness argument was made for the first time in his objections so is not properly before this Court. *See id.*; Dkt. Nos. 48. Even if the issue was properly raised, the record demonstrates facts that make this case ripe for judicial review. Dkt. No. 76 at 21. While Richardson points to an absence of medical records concerning strobe-induced seizures, Hoffman points out in his response that clinic visits are not the only way to document a seizure, and not every seizure requires clinical intervention, but it still can be a harm. Dkt. No. 87 at 10. Hoffman has raised factual issues about whether he was subjected to strobe flashlights and suffered seizures because of them. *Id.*; Dkt. No. 76 at 21. That is not an abstract disagreement about administrative policies or practices as the ripeness doctrine hopes to avoid. *See Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807 (2003).

All other objections have been adequately addressed in the M&R or are either general or frivolous. *See* Dkt. No. 76; *Battle*, 834 F.2d 419.

After independently reviewing the record, the filings and the applicable law the Court **ADOPTS** the **M&R** in its entirety, Dkt. No 76. The Court **OVERRULES** Richardson's and Hoffman's objections, Dkt. Nos. 81, 84, 87. The Court **GRANTS IN PART** and **DENIES IN PART** Richardson's Motion for Summary Judgment, Dkt. No. 48. The Court hereby:

- **DENIES** Summary Judgment as to personal involvement, qualified immunity, Eleventh Amendment immunity and § 1997e(e).
- **DENIES** Summary Judgment as to a deliberate indifference claim against Richardson in his official capacity for injunctive relief in connection with Hoffman's seizure disorder.
- **GRANTS** Summary Judgment as to the deliberate indifference claim against Richardson for sleep deprivation.
- **DENIES** Hoffman's motion for a TRO or preliminary injunctive relief, Dkt. No. 51.

SIGNED this 7th day of April, 2020.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', written over a horizontal line.

Hilda Tagle
Senior United States District Judge